

98TH CONGRESS
2D SESSION

S. 774

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 29, 1984

Referred to the Committee on Government Operations

AN ACT

Entitled "The Freedom of Information Reform Act".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 FEES AND WAIVERS

4 SECTION. 1. Paragraph (4)(A) of section 552(a) of title
5 5, United States Code, is amended to read as follows:

6 “(4)(A)(i) In order to carry out the provisions of this
7 section, each agency shall promulgate regulations, pursuant
8 to notice and receipt of public comment, specifying the sched-
9 ule of fees applicable to the processing of requests under this
10 section and establishing procedures and guidelines for deter-

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1 mining when such fees should be waived or reduced. Such

2 schedules shall conform to the guidelines which shall be pro-

3 mulgated, pursuant to notice and receipt of public comment,

4 by the Office of Management and Budget and which shall

5 provide for a uniform schedule of fees for all agencies. Such

6 regulations—

7 “(a) shall provide for the payment of all costs rea-

8 sonably and directly attributable to responding to the

9 request, which shall include reasonable standard

10 charges for the costs of services by agency personnel in

11 search, duplication, and other processing of the re-

12 quest. The term ‘processing’ does not include services

13 of agency personnel in resolving issues of law and

14 policy of general applicability which may be raised by

15 a request, but does include services involved in exam-

16 ining records for possible withholding or deletions to

17 carry out determinations of law or policy. Such regula-

18 tions may also provide for standardized charges for cat-

19 egories of requests having similar processing costs,

20 “(b) shall provide that no fee is to be charged by

21 any agency with respect to any request or series of re-

22 lated requests whenever the costs of routine collection

23 and processing of the fee are likely to equal or exceed

24 the amount of the fee, and

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1 “(c) in the case of any request or series of related
2 requests for records containing commercially valuable
3 technological information which was generated or pro-
4 cured by the Government at substantial cost to the
5 public, is likely to be used for a commercial purpose,
6 and will deprive the Government of its commercial
7 value, may provide for the charging of a fair value fee,
8 in addition to or in lieu of any processing fees other-
9 wise chargeable, taking into account such factors as
10 the estimated commercial value of the technological in-
11 formation, its costs to the Government, and any public
12 interest in encouraging its utilization.
13 Nothing in this subparagraph shall supersede fees chargeable
14 under a statute specifically providing for setting the level of
15 fees for particular types of records.
16 “(ii) With respect to search and duplication charges,
17 documents shall be furnished without charge or at a reduced
18 charge where the agency determines that waiver or reduction
19 of the fee is in the public interest because furnishing the in-
20 formation can be considered as primarily benefiting the gen-
21 eral public and not the commercial or other private interests
22 of the requester. With respect to all other charges, docu-
23 ments shall be furnished without such charges where the
24 agency determines that the information is not requested for a
25 commercial use and the request is being made by or on behalf

1 of (a) an individual, or educational, or noncommercial scien-
2 tific institution, whose purpose is scholarly or scientific re-
3 search; (b) a representative of the news media; or (c) a non-
4 profit group that intends to make the information available to
5 the general public.

6 “(iii) One-half of the fees collected under this section
7 shall be retained by the collecting agency to offset the costs
8 of complying with this section. The remaining fees collected
9 under this section shall be remitted to the Treasury’s general
10 fund as miscellaneous receipts, except that any agency deter-
11 mined upon an investigation and report by the General Ac-
12 counting Office or the Office of Management and Budget not
13 to have been in substantial compliance with the applicable
14 time limits of paragraph (6) of this subsection shall not there-
15 after retain any such fees until determined by the agency
16 making such finding to be in substantial compliance.”.

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TIME LIMITS

18 SEC. 2. Paragraph (6) of section 552(a) of title 5, United
19 States Code, is amended to read as follows:

20 “(6)(A) Except as otherwise provided in this paragraph,
21 each agency, upon any request for records made under para-
22 graph (1), (2), or (3) of this subsection, shall—

23 “(i) determine within ten working days after the
24 receipt of any such request whether to comply with
25 such request and shall immediately notify the requester

1 of such determination and the reasons therefor, and of
2 the right of such person to appeal to the head of the
3 agency any adverse determination; and

4 “(ii) make a determination with respect to any
5 appeal within twenty working days after the receipt of
6 such appeal. If on appeal the denial of the request for
7 records is in whole or in part upheld, the agency shall
8 notify the requester of the provisions for judicial review
9 of that determination under paragraph (4) of this sub-
10 section.

11 “(B) In unusual circumstances as defined in this subpar-
12 agraph, the time limits prescribed in either clause (i) or clause
13 (ii) of subparagraph (A) may be extended by written notice to
14 the requester setting forth the reasons for such extension and
15 the date on which a determination is expected to be dis-
16 patched. No such notice shall specify a date that would result
17 in extensions of more than an aggregate of thirty working
18 days. As used in this subparagraph, ‘unusual circumstances’
19 means, but only to the extent reasonably necessary to the
20 proper processing of the particular request—

21 “(i) the need to search for and collect the request-
22 ed records from field facilities or other establishments
23 that are separate from the office processing the re-
24 quest;

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(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; (ii) make a determination with respect to any

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein;

(iv) a request which the head of the agency has specifically stated in writing cannot be processed within the time limits stated in paragraph (6)(A) without significantly obstructing or impairing the timely performance of a statutory agency function;

(v) the need for notification of submitters of information and for consideration of any objections to disclosure made by such submitters; or

(vi) an unusually large volume of requests or appeals at an agency, creating a substantial backlog.

(C) Any requester shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances and that the agency is exercising due

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1 diligence in responding to the request, the court may retain
 2 jurisdiction and allow the agency additional time to complete
 3 its review of the records. An agency shall not be considered
 4 to have violated the otherwise applicable time limits until a
 5 court rules on the issue. (ii) the agency shall notify the submitter that

6 (D) Upon any determination by an agency to comply
 7 with a request for records, the records shall be made prompt-
 8 ly available to the requester, subject to the provisions of
 9 paragraph (7). Any notification of denial of any request for
 10 records under this subsection shall set forth the names and
 11 titles or positions of each person responsible for the denial of
 12 such request. (iii) the submitter may, within ten working days

13 (E) Each agency shall promulgate regulations, pursu-
 14 ant to notice and receipt of public comment, by which a re-
 15 quester who demonstrates a compelling need for expedited
 16 access to records shall be given expedited access. (iv) the agency shall notify the submitter of any

17 BUSINESS CONFIDENTIALITY PROCEDURES

18 SEC. 3. Section 552(a) of title 5, United States Code, is
 19 amended by adding after paragraph (6) the following new
 20 paragraph: (i) the information requested is not being released

21 (7)(A) Each agency shall promulgate regulations, pur-
 22 suant to notice and receipt of public comment, specifying pro-
 23 cedures by which— (i)(A) if such designation is required by

24 (i) a submitter may be required to designate, at
 25 the time it submits or provides to the agency or there-

1 after, any information consisting of trade secrets, or
2 commercial, research, financial, or business information
3 which is exempt from disclosure under subsection
4 (b)(4);

5 “(ii) the agency shall notify the submitter that a
6 request has been made for information provided by the
7 submitter, within ten working days after the receipt of
8 such request, and shall describe the nature and scope
9 of the request and advise the submitter of his right to
10 submit written objections in response to the request;

11 “(iii) the submitter may, within ten working days
12 of the forwarding of such notification, submit to the
13 agency written objection to such disclosure, specifying
14 all grounds upon which it is contended that the infor-
15 mation should not be disclosed; and

16 “(iv) the agency shall notify the submitter of any
17 final decision regarding the release of such information.

18 “(B) An agency is not required to notify a submitter
19 pursuant to subparagraph (A) if—

20 “(i) the information requested is not designated by
21 the submitter as exempt from disclosure in accordance
22 with agency regulations promulgated pursuant to sub-
23 paragraph (A)(i), if such designation is required by the
24 agency;

1 “(ii) the agency determines, prior to giving such
2 notice, that the request should be denied;

3 “(iii) the disclosure is required by law (other than
4 this section) and the agency notified the submitter of
5 the disclosure requirement prior to the submission of
6 the information;

7 “(iv) the information lawfully has been published
8 or otherwise made available to the public; or

9 “(v) the agency is a criminal law enforcement
10 agency that acquired the information in the course of a
11 lawful investigation of possible violations of criminal
12 law.

13 “(C) Whenever an agency notifies a submitter of the
14 receipt of a request pursuant to subparagraph (A), the agency
15 shall notify the requester that the request is subject to the
16 provisions of this paragraph and that notice of the request is
17 being given to a submitter. Whenever an agency notifies a
18 submitter of final decision pursuant to subparagraph (A), the
19 agency shall at the same time notify the requester of such
20 final decision.

21 “(D) Whenever a submitter has filed objections to dis-
22 closure of information pursuant to subparagraph (A)(iii), the
23 agency shall not disclose any such information for ten work-
24 ing days after notice of the final decision to release the re-
25 quested information has been forwarded to the submitter.

1 “(E) The agency’s disposition of the request and the
2 submitter’s objections shall be subject to judicial review pur-
3 suant to paragraph (4) of this subsection. If a requester files a
4 complaint under this section, the administrative remedies of a
5 submitter of information contained in the requested records
6 shall be deemed to have been exhausted.

7 “(F) Nothing in this paragraph shall be construed to be
8 in derogation of any other rights established by law protect-
9 ing the confidentiality of private information.”.

10 JUDICIAL REVIEW

11 SEC. 4. Section 552(a)(4) of title 5, United States Code,
12 is amended—

13 (1) by amending subparagraph (B) to read as fol-
14 lows:

15 “(B) On complaint filed by a requester within one hun-
16 dred and eighty days from the date of final agency action or
17 by a submitter after a final decision to disclose submitted in-
18 formation but prior to its release, the district court of the
19 United States in the district in which the complainant re-
20 sides, or has his principal place of business, or in which the
21 agency records are situated, or in the District of Columbia,
22 has jurisdiction—

23 “(i) to enjoin the agency from withholding agency
24 records and to order the production of any agency rec-
25 ords improperly withheld from the requester;

1 “(ii) to enjoin the agency from any disclosure of
2 records which was objected to by a submitter under
3 paragraph (7)(A)(iii) or which would have been objected
4 to had notice been given as required by paragraph
5 (7)(A)(i); or

6 “(iii) to enjoin the agency from failing to perform
7 its duties under subsections (a) (1) and (2).”.

8 (2) by redesignating subparagraphs (C), (D), (E),
9 (F), and (G) as subparagraphs (F), (G), (H), (I), and
10 (J), respectively, and by adding after subparagraph (B)
11 the following new subparagraphs:

12 “(C) In an action based on a complaint—

13 “(i) by a requester, the court shall have jurisdic-
14 tion over any submitter of information contained in the
15 requested records, and any such submitter may inter-
16 vene as of right in the action; and

17 “(ii) by a submitter, the court shall have jurisdic-
18 tion over any requester of records containing informa-
19 tion which the submitter seeks to have withheld, and
20 any such requester may intervene as of right in the
21 action.

22 “(D) The agency that is the subject of the complaint
23 shall promptly, upon service of a complaint—

1 “(i) seeking the production of records, notify each
2 submitter of information contained in the requested rec-
3 ords that the complaint was filed; and

4 “(ii) seeking the withholding of records, notify
5 each requester of the records that the complaint was
6 filed.

7 “(E) In any case to enjoin the withholding or the disclo-
8 sure of records, or the failure to comply with subsection (a)
9 (1) or (2), the court shall determine the matter de novo. The
10 court may examine the contents of requested agency records
11 in camera to determine whether such records or any part
12 thereof shall be withheld under any of the exemptions set
13 forth in subsection (b) of this section. The burden is on the
14 agency to sustain its action to withhold information and the
15 burden is on any submitter seeking the withholding of infor-
16 mation.”; and

17 (3) in redesignated subparagraph (H)—

18 (A) by adding “or any submitter who is a
19 party to the litigation” after “United States”; and

20 (B) by striking out “complainant” and insert-
21 ing in lieu thereof “requester”.

22 PUBLIC RECORD REQUESTS

23 SEC. 5. Section 552(a) of title 5, United States Code, is
24 amended by adding at the end thereof the following new
25 paragraph:

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1 expected to jeopardize investigations, inspections, audits, or
2 negotiations, and (B) examination material used solely to de-
3 termine individual qualifications for employment, promotion,
4 or licensing to the extent that disclosure could reasonably be
5 expected to compromise the objectivity or fairness of the ex-
6 amination process;”.

PERSONAL PRIVACY

8 SEC. 8. Section 552(b)(6) of title 5, United States Code,
9 is amended to read as follows:

10 “(6) records or information concerning individuals,
11 including compilations or lists of names and addresses
12 that could be used for solicitation purposes, the release
13 of which could reasonably be expected to constitute a
14 clearly unwarranted invasion of personal privacy;”.

LAW ENFORCEMENT

16 SEC. 9. (a) Section 552(b)(7) of title 5, United States
17 Code, is amended to read as follows:

18 “(7) records or information compiled for law en-
19 forcement purposes, but only to the extent that the
20 production of such law enforcement records or informa-
21 tion (A) could reasonably be expected to interfere with
22 enforcement proceedings, (B) would deprive a person of
23 a right to a fair trial or an impartial adjudication, (C)
24 could reasonably be expected to constitute an unwar-
25 ranted invasion of personal privacy, (D) could reason-

1 ably be expected to disclose the identity of a confiden-
2 tial source, including a State, local, or foreign agency
3 or authority or any private institution which furnished
4 information on a confidential basis, and, in the case of
5 a record or information compiled by criminal law en-
6 forcement authority in the course of a criminal investi-
7 gation or by an agency conducting a lawful national
8 security intelligence investigation, information furnished
9 by a confidential source, (E) would disclose techniques
10 and procedures for law enforcement investigations or
11 prosecutions, or would disclose guidelines for law en-
12 forcement investigations or prosecutions if such disclo-
13 sure could reasonably be expected to risk circumven-
14 tion of the law, or (F) could reasonably be expected to
15 endanger the life or physical safety of any natural
16 person;”.

17 (b) Section 552(a) of title 5, United States Code, is
18 amended by adding after paragraph (8) thereof the following
19 new paragraph:

20 “(9) Nothing in this section shall be deemed applicable
21 in any way to the informant records maintained by a law
22 enforcement agency under an informant’s name or personal
23 identifier, whenever access to such records is sought by a
24 third party according to the informant’s name or personal
25 identifier.”.

1 ADDITIONAL EXEMPTIONS

2 SEC. 10. Section 552(b) of title 5, United States Code,
3 is amended by striking out "or" at the end of paragraph (8),
4 by striking out the period at the end of paragraph (9) and
5 inserting in lieu thereof "; or", and by adding the following
6 new paragraph after paragraph (9):

7 "(10) records or information maintained or origi-
8 nated by the Secret Service in connection with its pro-
9 tective functions to the extent that the production of
10 such records or information could reasonably be ex-
11 pected to adversely affect the Service's ability to per-
12 form its protective functions."

13 REASONABLY SEGREGABLE

14 SEC. 11. Section 552(b) of title 5, United States Code,
15 is amended by adding after the last sentence thereof the fol-
16 lowing: "In determining which portions are reasonably segre-
17 gable in the case of records containing material covered by
18 paragraph (1) or (7) of this subsection, the agency may con-
19 sider whether the disclosure of particular information would,
20 in the context of other information available to the requester,
21 cause the harm specified in such paragraph."

22 PROPER REQUESTS

23 SEC. 12. Section 552(a)(3) of title 5, United States
24 Code, is amended to read as follows:

1 “(3)(A) Except with respect to the records made availa-
2 ble under paragraphs (1) and (2) of this subsection, each
3 agency, upon any request by a requester who is a United
4 States person for records which (i) reasonably describes such
5 records and (ii) is made in accordance with published rules
6 stating the time, place, fees (if any), and procedures to be
7 followed, shall make the records promptly available to the
8 requester.

9 “(B) The time limits prescribed in subparagraph (A) of
10 paragraph (6) shall be tolled whenever the requester (or any
11 person on whose behalf the request is made) is a party to any
12 ongoing judicial proceeding or administrative adjudication in
13 which the Government is also a party and may be requested
14 to produce the records sought. Nothing in this subparagraph
15 shall be construed to bar (i) a request for any records which
16 are not related to the subject matter of such pending proceed-
17 ing, or (ii) a request for any records which have been denied
18 to a party in the course of a judicial proceeding or adminis-
19 trative adjudication that is no longer pending.

20 “(C) The Attorney General, in accordance with public
21 rulemaking procedures set forth in section 553 of this title,
22 may by regulation prescribe such limitations or conditions on
23 the extent to which and on the circumstances or manner in
24 which records requested under this paragraph or under sec-
25 tion 552a of this title shall be made available to requesters

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who are persons imprisoned under sentence for a felony under Federal or State law or who are reasonably believed to be requesting records on behalf of such persons, as he finds to be (i) appropriate in the interests of law enforcement, or foreign relations or national defense, or of the efficient administration of this section, and (ii) not in derogation of the public information purposes of this section.

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ORGANIZED CRIME

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SEC. 13. Section 552 of title 5, United States Code, is amended by adding a new subsection (c) as follows and redesignating the current subsections (c), (d), and (e) as (d), (e), and (f) respectively.

(c) Nothing in this section shall be deemed applicable to documents compiled in any lawful investigation of organized crime; designated by the Attorney General for the purposes of this subsection and conducted by a criminal law enforcement authority for law enforcement purposes, if the requested document was first generated or acquired by such law enforcement authority within five years of the date of the request, except where the agency determines pursuant to regulations promulgated by the Attorney General that there is an overriding public interest in earlier disclosure or in longer exclusion not to exceed three years. Notwithstanding any other provision of law, no document described in the preceding sentence may be destroyed or otherwise disposed of

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1 until the document is available for disclosure in accordance

2 with subsections (a) and (b) of this section for a period of not

3 less than ten years."

4 **REPORTING UNIFORMITY**

5 **SEC. 14. Section 552(e) of title 5, United States Code**

6 (as redesignated), is amended—

7 (1) by striking out "calendar" the second and

8 fourth places it appears and inserting in lieu thereof

9 "fiscal";

10 (2) by striking out "March" each place it appears

11 and inserting in lieu thereof "December";

12 (3) in paragraph (4), by striking out subsection

13 (a)(4)(F) and inserting in lieu thereof "subsection

14 (a)(4)(F), and

15 (4) in the next to last sentence, by striking out

16 "subsections (a)(4) (E), (F), and (G) and inserting in

17 lieu thereof subsections (a)(4) (H), (I), and (J)".

18 **DEFINITIONS**

19 **SEC. 15. Section 552(f) of title 5, United States Code**

20 (as redesignated), is amended to read as follows:

21 "(f) For purposes of this section—

22 (1) "agency" means any executive department,

23 military department, Government corporation, Govern-

24 ment-controlled corporation, or other establishment in

25 the executive branch of the Government (including the

1 Executive Office of the President), or any independent
2 regulatory agency;

3 “(2) ‘submitter’ means any person who has sub-
4 mitted to an agency (other than an intelligence
5 agency), or provided an agency access to, trade se-
6 crets, or commercial, research, or financial information
7 (other than personal financial information) in which the
8 person has a commercial or proprietary interest;

9 “(3) ‘requester’ means any person who makes or
10 causes to be made, or on whose behalf is made, a
11 proper request for disclosure of records under subsec-
12 tion (a);

13 “(4) ‘United States person’ means a citizen of the
14 United States or an alien lawfully admitted for perma-
15 nent residence (as defined in section 101(a)(20) of the
16 Immigration and Nationality Act, 8 U.S.C.
17 1101(a)(20)), an unincorporated association a substan-
18 tial number of members of which are citizens of the
19 United States or aliens lawfully admitted for perma-
20 nent residence, or a corporation which is incorporated
21 in the United States, but does not include a corpora-
22 tion or an association that is a foreign power, as de-
23 fined in section 101(a) of the Foreign Intelligence Sur-
24 veillance Act of 1978 (50 U.S.C. 1801(a));

1 “(5) ‘working days’ means every day excluding
2 Saturdays, Sundays, and Federal legal holidays; and

3 “(6) ‘organized crime’ means those structured and
4 disciplined associations of individuals or of groups of in-
5 dividuals who are associated for the purpose of obtain-
6 ing monetary or commercial gains or profits, wholly or
7 in part by illegal means, while generally seeking to
8 protect and promote their activities through a pattern
9 of graft or corruption, and whose associations generally
10 exhibits the following characteristics:

11 “(A) their illegal activities are conspiratorial,

12 “(B) in at least part of their activities, they
13 commit acts of violence or other acts which are
14 likely to intimidate,

15 “(C) they conduct their activities in a me-
16 thodical or systematic and in a secret fashion,

17 “(D) they insulate their leadership from
18 direct involvement in illegal activities by their or-
19 ganizational structure,

20 “(E) they attempt to gain influence in gov-
21 ernment, politics, and commerce through corrup-
22 tion, graft, and illegitimate means, and

23 “(F) they engage in patently illegal enter-
24 prises such as dealing in drugs, gambling, loan-

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1 sharking, labor racketeering, or the investment of
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3 illegally obtained funds in legitimate businesses.”
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5 PUBLICATION OF EXEMPTION 3, STATUTES
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7 SEC. 16. Section 552 of title 5, United States Code, is
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9 amended by adding a new subsection (g) as follows:
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11 “(g) Within two hundred and seventy days of the date of
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13 the enactment of this subsection, any agency which relies or
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15 intends to rely on any statute which was enacted prior to the
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17 date of enactment of this subsection, or during the thirty-day
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19 period after such date to withhold information under subsec-
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21 tion (b)(3) of this section, shall cause to be published in the
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23 Federal Register a list of all such statutes and a description
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25 of the scope of the information covered. The Justice Depart-
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27 ment shall also publish a final compilation of all such listings
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29 in the Federal Register upon the completion of the two-hun-
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31 dred-and-seventy-day period described in the preceding sen-
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33 tence. No agency may rely, after two hundred and seventy
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35 days after the date of enactment of this subsection, on any
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37 such statute not listed in denying a request. Nothing in this
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39 subsection shall affect existing rights of any party other than
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41 an agency.”
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43 Passed the Senate February 27, 1984.
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45 Attest: WILLIAM F. HILDENBRAND,
 46

47 Secretary.
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